

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

May 20, 2011

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:01 p.m. in the Council Chambers, 200 East Main Street, on May 20, 2011.

Members present were Chairman Louis Stout, James Griggs, Kathryn Moore, Barry Stumbo, Janice Meyer, Noel White and Thomas Glover. Others present were Jim Hume, Division of Building Inspection; Chuck Saylor, Division of Engineering; Jeff Neal, Division of Traffic Engineering; and Rochelle Boland, Department of Law. Staff members in attendance were Bill Sallee, Barbara Rackers, Jim Marx and Wanda Howard.

Swearing of Witnesses - Chairman Stout asked all those present who would be speaking or offering testimony on any case to stand, raise their right hand and be sworn. He administered the oath to several citizens present.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the January 28, 2011 and February 11, 2011 meetings would be considered at this time.

Discussion – Ms. Meyer stated that she had a question regarding the January minutes for CV-2010-100: TOTAL GRACE BAPTIST CHURCH. She noted that there was a motion made and seconded (on page 8 & 9) but there was no vote listed in the draft minutes. There were findings listed, but no vote on the outcome. Chairman Stout asked if the minutes could be corrected. Mr. Sallee said that the record of the vote did exist in the planning office, and that the staff would try to report that to the Board before the end of today's meeting.

Mr. Griggs said that he had several questions about the draft minutes relating to C-2010-110: VULCAN CONSTRUCTION MATERIALS, LP. He suggested that consideration of the minutes be delayed until after today's public hearings have concluded. Chairman Stout agreed to do so.

NOTE: The discussion about these minutes is listed below under BOARD ITEMS.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **C-2011-29: STEPHEN HOWARD** - appeals for a conditional use permit to establish a special event facility, accessory to a small farm winery, in the Agricultural Rural (A-R) zone, on property located at 3497 North Cleveland Road (Council District 12).

The Staff Recommends: Postponement, for the following reasons:

- a. The appellant has indicated a desire to meet with the staff to get a better understanding of what project revisions could be pursued that would result in a finding that the event facility proposed can be considered as clearly incidental and subordinate to the winery operation that is to be established.
- b. Should the conditional use application be revised, additional time will be required to review whether the proposed event facility (as revised) will adversely impact any surrounding properties.

Representation – Mr. Richard Murphy, attorney for the appellant, was present for this appeal. He said that the applicant had met with the staff, with Mr. Bruce Simpson, and with the Fayette Alliance. He thought that all were in agreement that this case be postponed one month.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Meyer and carried unanimously to postpone **C-2011-29: STEPHEN HOWARD** – an appeal for a conditional use permit to establish a special event facility, accessory to a small farm winery, in the Agricultural Rural (A-R) zone, on property located at 3497 North Cleveland Road, to the Board's June meeting.

2. **No Discussion Items** - The Chair asked if there were any other agenda items where no discussion is needed...that

is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

- a. **C-2011-30: JORGE PEREZ** - appeals for a conditional use permit to allow retail sale of flea market items within an existing building previously approved for antique sales, in a Light Industrial (I-1) zone, on property located at 1211 Manchester Street (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- a. Retail sales of flea market items at this location, in conjunction with antique sales and furniture storage that takes place in a different portion of the same building, should not adversely affect the subject or surrounding properties. The property is bordered by other commercial uses on three sides, and a landscape buffer already exists along the north side that adjoins an established residential area. Adequate off-street parking will be provided, and sales activities will be confined to daytime and early evening hours three days per week.
- b. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation is made subject to the following conditions:

1. Sale of flea market items shall take place in accordance with the submitted application and site plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection within 60 days of action by the Board.
3. Sales shall be limited to the hours of 10:00 AM to 8:00 PM on Friday, Saturday and Sunday.

Representation – Mr. Jorge Perez and Ms. Amanda Benavides were present for this appeal. Chairman Stout asked Ms. Benavides if Mr. Perez had reviewed the conditions for approval and would agree to abide by them. She responded affirmatively.

Action – A motion was made by Ms. Moore, seconded by Ms. White, and carried unanimously to approve **C-2011-30: JORGE PEREZ** – an appeal for a conditional use permit to allow retail sale of flea market items within an existing building previously approved for antique sales, in a Light Industrial (I-1) zone, on property located at 1211 Manchester Street, for the reasons recommended by the staff, and subject to the three conditions recommended by the staff.

- B. **Transcript or Witnesses** - The Chair will announce that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

There were none on this agenda.

- D. **Conditional Use Appeals**

1. **C-2011-31: MAIN & VINE PARTNERS, LLC** - appeals for a conditional use permit to establish two drive-through facilities (one for a bank and one for a pharmacy), in a Downtown Business (B-2) zone, on property

located at 366, 370, 376 and 400 East Main Street (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Drive-through facilities for a proposed bank (or restaurant) and pharmacy at this location should not adversely affect the subject or surrounding properties. Adequate vehicular stacking space and access from both East Main Street and East Vine Street will be provided. The facilities have been designed to minimize any potential safety hazards, subject to final design adjustments as required by the Division of Traffic Engineering.
- b. Landscaping required by Article 18 of the Zoning Ordinance for the vehicular use areas will be augmented by additional tree plantings to improve the appearance of the parking lot that is proposed at a highly visible location along East Vine Street. Incorporating each drive-through facility with multi-level buildings that will have contemporary urban features will help to visually integrate the proposed facilities into the surrounding downtown environment.
- c. All necessary public services and facilities are available and adequate for the proposed use, with sidewalk improvements to be undertaken around the full perimeter of the subject property.

This recommendation is made subject to the following conditions:

1. The drive-through facilities shall be established in accordance with the submitted application and site plan 5a (if a bank occupies the southwest corner of the easterly building) or 5b (if a restaurant is proposed for that portion of the easterly building). In either case, it is understood that some further site plan revisions may be required by the Divisions of Engineering, Traffic Engineering, or Building Inspection to satisfy their requirements.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The parking lot and associated traffic aisles, including aisles for the drive-through facilities, shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
4. The final design of the proposed access points, parking lot, drive-through facilities and traffic aisles shall be subject to review and approval by the Division of Traffic Engineering, and the Kentucky Transportation Cabinet, as necessary.
5. A storm water management plan shall be implemented in accordance with the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
6. Landscaping required by Article 18-3(a)(2)4 of the Zoning Ordinance for the vehicular use areas shall be augmented by a minimum of 15 tree plantings, as conceptually indicated on the Concept 5b site plan. Tree size and species, as well as specific locations, shall be shown on a detailed landscaping plan, subject to review and approval by the Division of Building Inspection or other appropriate Division of the UCG.
7. Any tree wells removed due to the access alterations along East Vine Street shall be relocated in the immediate vicinity to provide tree spacing comparable to what currently exists (one tree planter every 30 to 40 feet).
8. Existing tree wells remaining along East Vine Street, from the "relocated entrance" around to the "gateway element", as identified on the April 15, 2011 site plan, shall be renovated with ADA compliant grates, installed in such a manner that a minimum unobstructed pedestrian thoroughfare width of 6' is maintained along the sidewalk. Sidewalk resurfacing in the immediate area of the tree wells shall be done, as needed according to the Department of Environmental Quality and Public Works, to eliminate uneven sidewalk sections. Any resurfacing shall match the existing sidewalk patterns.
9. Four street trees shall be planted along the East Main Street frontage of the subject property, within ADA compliant tree wells at the street side of the sidewalk. Tree plantings and tree well design shall be subject to approval by the Urban Forester, with a minimum unobstructed pedestrian thoroughfare of at least 6' in width to be maintained.
10. Any necessary utility relocations and easement releases shall be completed prior to the issuance of any building permits.
11. The appellant shall enter into a lease or other similar form of binding agreement with the Parking Authority for the portion of the parking lot that extends into the Water Street right-of-way. The terms and conditions of that agreement shall be subject to approval by the Parking Authority.
12. An encroachment agreement and/or right-of-way closure shall be obtained for the applicable portions of the Water Street and South Eastern Avenue right-of-ways to be generally encumbered by portions of the proposed building, and the drive-through facility proposed for the easterly building for an area of approximately 5,233 square feet in size.

Representation – Ms. Rena Wiseman, attorney with Stoll, Keenon & Ogden, was present for the appellant. She said that Mr. Phil Holoubek, one of the principals was also present, along with Mr. Kevin Phillips, their site designer. Ms. Wiseman said that they had reviewed the recommendations by the staff, and would agree to the conditions listed, with one change and with one clarification.

Ms. Wiseman noted that in the Staff Report, it was stated that one of the drive-through windows potentially could be used by a restaurant. That is why they had earlier submitted two versions of the site plan for review by the Board. She said that a bank or a pharmacy was intending to use the other drive-through facility.

Ms. Wiseman requested that they be permitted two years to exercise this conditional use permit, rather than the standard one-year limitation. She said that with those two alterations, she would ask the Board to approve their request.

Discussion – Chairman Stout asked about the proposed location of the restaurant. Mr. Phillips displayed the site plan on the overhead projector for the Board's review, and Mr. Holoubek submitted elevations of the proposed new building on this site. Mr. Holoubek described the proposed project, noting the location of the two drive-through facilities. He said that the western-most drive-through facility, closest to the Coach Craft property, would only be used by a bank or a pharmacy, due to the vehicle movements and vehicle stacking from Vine Street towards Main Street. Such vehicle stacking at this location back out onto Main Street (if in the other direction) would not be permitted. Mr. Holoubek said that the eastern drive-through was proposed for either a bank, a pharmacy or for a "fast casual" restaurant. He said that the restaurant would not be for a "fast food" chain. He felt like this would be more for an Atlanta Bread Company or a Panera-type of restaurant. The two versions of the site plan were being offered because a bank or a pharmacy would have a reversed traffic flow from that needed for a restaurant, which requires the driver's side of the vehicle to be adjacent to the building.

Mr. Griggs asked if the façade shown along East Main Street would have true light windows, or if there would be pedestrian entrances to the building along that elevation. Mr. Holoubek replied that there will be windows and pedestrian entrances from Main Street. The elevations from East Main and from its intersection with East Vine Street/Midland Avenue was displayed for the Board. Mr. Holoubek complimented EOP Architects for the building design, noting that it had "several fronts" given the number of street frontages for this tract. He said that the building would be as close to the street as possible, so it will align with the other existing buildings along Main Street. He said that young professionals want a pedestrian and bike-friendly environment, and so they will also provide outdoor seating as part of this project. Chairman Stout said that he liked what he had seen and heard about this project.

Mr. Glover asked how the traffic will exit the property from the eastern drive-through facility. Mr. Phillips, Endris Engineering, replied that the traffic would exit the drive-through lane and would be able to proceed to either access point proposed to East Vine Street. Mr. Glover asked if the crossing of traffic exiting the drive-through and entering the building would be a problem. Mr. Phillips said he did not, and that this would not be a thoroughfare, as there would be an "entrance-only" access point from East Main Street, "under the tunnel" in either site plan scenario. Mr. Glover clarified that the traffic exiting the drive-through, then, could only turn left or proceed straight, to which Mr. Phillips agreed.

Mr. Griggs said that the Board had received a letter from a nearby property owner, T. Kincaid, who expressed concern about the proposed loss of three parking spaces from Water Street. He asked if anything could be done to accommodate his concern. Mr. Marx identified the existing access point, and said that the relocated access point would no longer permit a direct exit from his parking lot onto East Vine Street. He said that there would be additional parking provided along Water Street in this area. He said that it is not that Mr. Kincaid's access would be "closed," but rather, it is to be relocated. Mr. Stumbo asked if the access into Mr. Kincaid's parking lot from Water Street would be closed. Mr. Marx replied that his property's access to Water Street would be maintained, as is.

Mr. Stumbo asked about the Kentucky Utilities underground electric line, and if the problems that had been posed for the prior CVS project had been resolved. Mr. Holoubek replied that this issue had been resolved, thanks to the hard work of his architects and KU. He said that the large KU vault is located at their proposed ingress point off East Main Street. The costs to move that line are exorbitant. He said that the building is permitted by KU to be as close as 2' to the vault, and that the upper floors are allowed to bridge the vault, as long as they are 18'-20' above it. He said that their Main+Vine project provided 22' high first-floor retail space, so he felt that this issue was now resolved. The ingress point is now located directly across from Eastern Avenue, so this had worked out well.

Action – A motion was made by Mr. Stumbo to approve **C-2011-31: MAIN & VINE PARTNERS, LLC** – an appeal for a conditional use permit to establish two drive-through facilities (one for a bank and one for a pharmacy), in a Downtown Business (B-2) zone, on property located at 366, 370, 376 and 400 East Main Street, for the reasons provided by the staff, and subject to the conditions recommended by the staff, adding a 13th condition, as follows:

13. The applicant shall have two years to exercise this conditional use permit.

Discussion – Chairman Stout asked the staff if they were agreeable to the added condition. Mr. Marx replied that the staff was agreeable.

Mr. Griggs seconded the motion.

Discussion – Chairman Stout asked if the other LFUCG staff present were agreeable to the added condition. Mr. Hume replied that as long as the appellant was active and proceeding with this project, their office was agreeable as well.

The motion for approval carried unanimously.

Mr. Stumbo stated that it was clear that the appellant had put a lot of effort into this application. He wished Mr. Holoubek the very best on the project. Mr. Holoubek thanked Mr. Stumbo, and said that he had been called a “downtown evangelist” in the past by his wife. Chairman Stout said that more of those types of evangelists are needed.

2. **C-2011-32: CARLA JACKSON-STOVALL** - appeals for a conditional use permit to provide family child care for up to 12 children, in a Townhouse Residential (R-1T) zone, on property located at 433 Hedgewood Drive (Council District 7).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, provided that recommended conditions are complied with relating to the overhead electric and other utility lines on the subject property. Adequate off-street and on-street parking is available. A large outdoor play area will be provided, to be fenced in accordance with the requirements of the Division of Building Inspection. Noise and other disturbances are not anticipated, as care will only be provided during daytime hours.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Child care shall be provided in accordance with the submitted application, and an amended site plan indicating full enclosure of the outdoor play area with suitable fencing.
2. Care shall be limited to the hours of 6:00 AM to 6:00 PM on Monday through Saturday.
3. All necessary permits, including a fence permit and occupancy certificate shall be obtained from the Division of Building Inspection prior to erection of the required fencing and prior to beginning child care activities at this location. Fencing shall be designed to provide a complete enclosure of the area to the rear of the home that is to serve as an outdoor play area (approximately 1,800 square feet in size) for children.
4. The facility shall at all times operate in compliance with regulations of the Kentucky Cabinet for Health and Family Services.
5. The appellant shall ensure that play equipment and other items available for use by children in the outdoor play area does not have any potential for contacting or otherwise interfering with overhead electric lines within the drainage and utility easement along the rear property line, or with any overhead utility lines extending to the house.
6. Overhead utility lines extending from the utility pole at the rear southerly corner of the property to the home shall be elevated to the maximum extent possible, in accordance with any applicable government or utility regulations, subject to confirmation by the Division of Building Inspection.

Representation – Ms. Carla Jackson-Stovall was present for her appeal. She indicated that she had reviewed the conditions recommended for approval and would agree to abide by them.

Discussion – Mr. Griggs asked if she owned the building. Ms. Jackson-Stovall replied that she had purchased the building and was in the process of moving in. Mr. Griggs said that the grass had not yet been mowed this year, and was wondering about the occupancy of the property. She replied that the grass will be mowed very soon.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover, and carried unanimously to approve **C-2011-32: CARLA JACKSON-STOVALL** – an appeal for a conditional use permit to provide family child care for up to 12 children, in a Townhouse Residential (R-1T) zone, on property located at 433 Hedgewood Drive, as recommended by the staff and subject to the six conditions recommended by the

staff.

E. **Administrative Review**

There were none on this agenda.

IV. **BOARD ITEMS** - The Chair announced that any items a Board member wished to present would be heard at this time.

- A. **Consideration of Minutes** – Mr. Sallee stated that a local attorney had requested that the Board provide a signed copy of the Board's December, 2010 minutes for an out-of-state lender regarding C-2010-88: TRILOGY HEALTH SERVICES. He said that he would ask Chairman Stout and Mr. Griggs to sign a copy of those minutes, already approved previously by the Board, after today's meeting, for that attorney.

Mr. Sallee said that Ms. Rackers is checking the records in the Division of Planning office to retrieve the actual vote on the TOTAL GRACE BAPTIST CHURCH case, and hoped to have that information for the Board before they adjourned this meeting.

Discussion – Mr. Griggs said that the VULCAN CONSTRUCTION MATERIALS case lasted many, many hours, and said he never really thought to ask before if the Board's minutes are a summary version of what is on the audio tape or not. He did remember that many Board members spoke of their feelings about the case at the conclusion of all the testimony. He read the minutes, and noted that they did not include all of his comments. He said that at the end of the hearing (in the February 11 minutes) that the mine tour that some members attended with Vulcan representatives was not the same as "a mine inspection." He said that he, Mr. Marx and Mr. Hopgood had an e-mail exchange about this, as he had hoped to inspect a number of items discussed prior to the Board's meeting. However, he was told that, due to MSHA rules, this would not be possible. He had hoped to see the roof falls in Section 1, for instance. Mr. Griggs said that having that sentence omitted in the record was very significant in his opinion. He asked whether the e-mails were part of the record; and if not, perhaps they should have been.

Ms. Boland said that the Board's minutes are not the only record of the hearing. She said that everything in the staff file, and all of the items submitted at those meetings, were part of the record, including the Board's minutes. Ms. Boland said that the case is now in litigation; that she is in the processing of listing all of the items submitted into the record, and that there were some e-mails included in the record. She said that the minutes are a summary, and should hit the "high points" of the matters considered by the Board for the entire hearing. In this case, the transcript is a video record on DVD with a time script on the bottom. She said that the minutes are not a transcript or the full account of the Board's hearing. However, they do need to be a meaningful summary of the key issues considered.

Mr. Griggs thanked Ms. Boland for clarifying that issue, and he asked if the staff could have the omitted sentence added into the February 11 minutes. Mr. Sallee agreed that this could be done, noting that the recording of the meeting can be reviewed by the staff, and the paragraph edited to reflect Mr. Griggs's comments. Mr. Griggs said that he was amenable to that change.

Mr. Sallee said that Ms. Rackers was able to find the vote by the Board on the Total Grace Church case from January 28. He said that the motion at the end of that hearing was made by Mr. Griggs, and the second was provided by Ms. White. He said that Mr. Stout and Mr. Glover were absent, but there were no dissenting votes on that motion. Mr. Sallee said that the January 28 minutes could be revised to include this information about the Board's action on that appeal, and he apologized for that omission to the January 28 draft minutes.

Action – A motion was made by Ms. Meyer and was seconded by Mr. Griggs to approve the minutes from the January 28 and February 11 meetings, subject to the corrections mentioned today at this meeting. The motion carried unanimously.

- B. **Consideration of Time Limits** – Ms. Moore asked if the Board could discuss possible time limits at this time.

Chairman Stout asked if the Board members had read the materials that had been forwarded to them previously. He said that he and Mr. Griggs had corresponded about this issue, and that he did not believe any changes were needed to the By-laws. He thought that, as Chair, he could curb extended and repetitious comments. He did not see any reason to establish a new procedure. He opened the floor for discussion.

Ms. Moore said that her concern was about the several lengthy Board meetings of late, and that the Board had spent many, many hours hearing testimony. She felt it would be better to start their meetings using time limits, and then extend those allotted times, if necessary, rather than impose them on a case-by-case basis. She felt that

this approach would be fairer than for the Board to decide at the start of any one case to impose time limits. She felt that since the Planning Commission and the Urban County Council had imposed time limits for their proceedings, she did not see a reason for the Board not to do the same.

Mr. Glover said that he did not want to suggest that he was opposed to time limits, but he did have a concern. He said that if the Board did impose them, he would not want the applicants or the objectors to feel that they had to take up the entire time allotment. He did not want speakers before the Board to feel like they had to fill the set time to in order to make their points.

Ms. Moore asked if this had been realized at the Planning Commission or Council, knowing that the Commission, at least, has not always had time limits. Mr. Sallee replied that had occurred a couple of times, perhaps; but more often, there had been requests by applicants to request additional time, in advance of the scheduled hearing. He recalled one instance involving a zone change hearing, where there were also requests for a conditional use permit and a variance, which the Commission can now consider at the same time as their zone change hearing. It was recognized that was an unusual circumstance, and that there would be more than the usual amount of information to present. In that instance, the Commission allowed 45 minutes for the applicant's presentation in that case, instead of the usual 30 minutes. He said that was more commonly seen than folks filling the total of the allotted time.

Mr. Glover asked about an item on page three of the Board's By-laws, listed under the powers of the Chair. He asked Ms. Boland if the Chair can cut off debate at some point. She replied that the Chair can cut off a presenter for being repetitive, and that this does occur occasionally at the Planning Commission and at the Council meetings. She said, regardless of whether time limits exist, that the Chair has this ability when testimony is repetitive. She felt that any time limits should apply not only to the presenters, but also to the citizens in support and opposed to an appeal. She said that everyone intending to speak should be allotted some amount of time to do so. Her experience has been that time limits make presenters more organized, and helps them to be concise, relevant and non-repetitive.

Mr. Glover asked who "holds the clock" with the Council's time limits. Chairman Stout said that should be done by the staff. Ms. Boland replied that the clock is usually set by the staff, but that informing the speaker of the expiration of their time is done by the Chair. The Chair must let them know when their time is about out.

Chairman Stout said that he had been a member for so long, that he was accustomed to long meetings. He also watched past BOA Chairs cut off speakers for being too repetitive. He said that some BOA meetings had extended past 1:00 a.m.; and while he doesn't like that, some cases "just take longer." He felt that the past Stockyards case was one such example, as it involved a lot of technical information, and involved two counties. Had it not, he felt that some issues would have been missed. He said that the Board may ask to continue a case to the following month, if necessary.

Ms. Meyer said that another option for the Board would be to schedule a special meeting for a case, if it is to be contentious. She thought that might prevent 12-hour meetings. She believed that everyone should be heard by the Board, regardless, and that was her main concern with this idea.

Ms. White agreed with Ms. Meyer, but thought that in the Vulcan case, the objectors did need to have time limits imposed. She felt that there was a great deal of repetition among those presenters.

Mr. Stumbo said that he wasn't sure that he could support time limits, but he did see Ms. Moore's point. He said that the discretion of the Chair can limit repetitive presentations. He wasn't sure that he would support a 3-minute limit for any speaker.

Mr. Glover asked if time limits created any "due process" legal issues for the Board. Ms. Boland replied that she was only aware of one case where this occurred, and that is where all of the objectors were given a total of five minutes to speak. She said that this would not be considered in this instance. She was not aware of any due process issue with the types of time limits being discussed today. She said that the Council and Planning Commission time limits were reasonable, and a good guide for the Board to consider. They allow these bodies to effectively function. She said that she also attends the Civil Service disciplinary hearings, where there is a 45-minute time limit for all presentations by each side. There, requests for additional time must be made in advance, and have been granted when based upon a reasonable request. She said that one such appellant asked for five days to present information, but were only given 1½ hours to present. They appealed the decision based upon due process issues, but their appeal was not successful. The court found that 90 minutes was a reasonable period of time for such a case.

Mr. Glover asked if there were any cases where time limits were not in place prior to the hearing, but the Chair

exercised discretion to limit testimony. Ms. Boland said that she had not researched that narrow issue.

Chairman Stout said that if time limits are to be imposed, when notification letters are mailed, then citizens should be made aware of them, and what is necessary to request additional time. He felt that some citizens might take offense to having a time limit imposed upon them, without their prior knowledge, and he understood that sentiment.

Mr. Glover said that if there are no time limits, then the Chair has a harder job. Chairman Stout said that, in looking at the Planning Commission's limits, he did not feel that a 30-minute time limit was fair to neighborhood objectors. He said that unless the Board has a case that they wish to continue to another meeting, then time limits are not absolutely necessary.

Mr. Griggs said that there were relatively few occasions where the Board had "been abused." He said that a few times, such as for the Stockyards and for the Vulcan Materials case, there were special meetings called to hear those presentations and objections. He said that the objectors represent a cross-section of the community, and some are prepared and some are not. He felt that some are scared to death to appear before the Board, while others are comfortable and fine speakers. He did not feel that adding another layer of stress upon the citizens was a good idea. He thought most citizens wanted "to get it over with" when appearing before the Board.

Mr. Glover said that the meetings should be as efficient as possible—with or without time limits. His main concerns were with due process issues, and he said wasn't sure whether those concerns were best served with time limits or not.

Chairman Stout said that former BOA Chair William Bagby used to say, "We will listen to you if you have something relevant to say; and if not, we will ask you to sit down!" He thought that approach worked. He said that using that approach, the Board did not have to stay in the Chambers until 1:30 a. m.

Mr. Griggs said that the current By-laws allow a "reasonable time" for objectors to speak, and then an opportunity for the appellant to rebut any comments. He is happy to leave them as they are, or to add that the Chair or the Board has the authority to impose time limits if the testimony is repetitive or off-topic. Ms. Boland suggested that the Board could also consider, given the broad diversity of opinions, that when special hearings are being considered, the Board could ask the parties to estimate the time they would need for their presentations. That way, the Board can hold each side to the time they estimate. The Board can let everyone know in advance how much time they will have for presentations, and can tailor that time, when those type of meetings are scheduled.

Mr. Griggs asked if the staff could do that. Ms. Boland said that the staff could report these estimates to the Board, but they have no authority to impose time limits. Mr. Griggs thought that the staff could estimate the long cases. Chairman Stout said that there are often changing dynamics in these cases. Ms. Boland said that sometimes, the staff doesn't know that there will be objections to an application, until the meeting begins. Ms. Meyer asked if there could be a trial balloon for this idea, ahead of changing the By-laws.

Ms. Moore said that it was clear to her that a majority of members did not favor changing the By-laws, so she suggested that the Board table this issue. Ms. Boland said that the Board could monitor the next few meetings to see how long meetings were lasting, and how long citizens were speaking. She said that the Board could also set aside this issue for a few months until this review has been done.

V. **STAFF ITEMS** - The Chair announced that any item a Staff member wished to present would be heard at this time.

A. **House Bill 55 Training Opportunity** – Mr. Marx and Chairman Stout announced that there would be an APA audio conference on Wednesday, June 8, 2011 from 4:00 until 5:30 in the Division of Planning Conference Room on the 7th floor of the Phoenix Building. The title of this training session is "Sustainability Planning for Officials," and will count toward 1.5 hours of training credit for Board members.

VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date will be June 24, 2011.

VII. **ADJOURNMENT** – There being no further business, the Chair declared the meeting adjourned at 1:59 p.m.